

CONNECTICUT SITING COUNCIL
DOCKET NO. 325

IN THE MATTER OF:

AN APPLICATION OF CELLCO PARTNERSHIP d/b/a/ VERIZON WIRELESS
FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND
OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY AT 111
UPPER FISH ROCK ROAD, SOUTHURY, CONNECTICUT

APPLICANT'S POST-HEARING BRIEF

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POST-HEARING BRIEF

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I. INTRODUCTION

On November 2, 2007, Cellco Partnership d/b/a Verizon Wireless ("Cellco" or "Applicant") filed an application (the "Application") with the Connecticut Siting Council ("Council") for a certificate of environmental compatibility and public need ("Certificate"), pursuant to Sections 16-50g et seq. of the Connecticut General Statutes ("Conn. Gen. Stat."), for the construction, maintenance and operation of a wireless telecommunications facility known as the "Newtown NE Facility" (the "Facility"). The Facility is proposed to be located on a 32-acre parcel at 111 Upper Fish Rock Road in the Town of Southbury ("Southbury"). (Cellco Exhibit 1 ("Cellco 1")). Cellco's proposed Facility would fill a significant coverage gap along Interstate 84 ("I-84") and provide coverage along local roadways in the southerly portion of Southbury and the northeasterly portion of Newtown. (Cellco 1, pp. 1-2). Cellco's existing network currently experiences an approximately 1.8 mile coverage gap along I-84 at PCS frequencies, and a 1.5 mile coverage gap along I-84 at cellular frequencies between its existing Newtown and Southbury West cell sites. (Cellco 4, Resp. No. 31; Transcript ("Tr.") 2/1/07 (afternoon), p. 44). These coverage problems must be resolved in order for Cellco to continue to provide high-quality, uninterrupted wireless telecommunications coverage within its service area consistent with its Federal Communications Commission ("FCC") license and the demands of its wireless telecommunications users. (Cellco 1, pp. 1-2, 7-8; Tab 7).

Cellco has presented, for the Council's consideration, a site that would satisfy its coverage objective in the Southbury area. To date, no other wireless carriers have committed to share the Facility. (Cellco 4, Resp. No. 19).

The Council conducted a public hearing on the Application on February 1, 2007. (Tr. p. 2). Prior to the afternoon session of the hearing, the Council and its staff visited the proposed cell site. At the Council's request, Cellco caused a balloon, with a diameter of approximately 4 feet, to be flown during the site visit at the proposed cell site location starting at 8 a.m. (Cellco 1, p. 13; Tr. pp. 25-26).

This post-hearing brief is filed on behalf of the Applicant pursuant to Section 16-50j-31 of the Regulations of Connecticut State Agencies ("R.C.S.A.") and the Council's directives. (Tr. (evening) p. 3). This brief evaluates the Application in light of the review criteria set forth in Section 16-50p of the Connecticut General Statutes.

II. FACTUAL BACKGROUND

A. Pre-Application History

Cellco conducted a search for an appropriate location for a facility to fill significant coverage gaps along I-84, as well as local roadways in the area between its existing Southbury West facility, an existing 150-foot Cingular Wireless tower at 133 Horse Fence Hill Road and Newtown facility, an existing 180-foot Crown Atlantic tower off Route 34 in Newtown. (Cellco 1, p. 7; Tab 7 and Tab 9). Neither of these existing facilities can resolve the existing coverage problem that Cellco is experiencing along I-84 and the surrounding area. (Cellco 1, pp. 9-10, Tab 7).

In an effort to avoid the unnecessary proliferation of towers, Cellco explored the shared use of several existing towers in the area. (Cellco 1, p. 10, Tab 9). Each of these alternative structures was rejected because they would not adequately fill the existing coverage gaps in the Southbury area. (Cellco 1, Tab 9).

If a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and/or where the visual impact of the site

is reduced to the greatest extent possible. In addition to the 32-acre subject site, Cellco explored several potential tower locations on a 203-acre Town-owned parcel off Icabod and Lakeside Roads. Due to severe topography in the area and Cellco's need to cover I-84, no suitable location on that site was identified. (Cellco 1, Tab 9).

To minimize the impact of a new tower in this case, Cellco has offered, if deemed appropriate, to disguise the tower as a pine tree to reduce the overall visual impact of the structure. (Cellco 1, p. 12; Tr. pp. 31-32).

B. Local Contacts

On August 22, 2006, Cellco representatives met with Southbury First Selectman Mark Cooper and Planning Administrator Deloris Curtis. During the meeting, Mr. Cooper and Ms Curtis received copies of technical information summarizing Cellco's plans for the Facility. Because the Facility is within 2,500 feet of the Town boundary, Cellco representatives also met with Newtown Public Works Director Fredrick Hurley, as designee for Newtown First Selectman Herbert C. Rosenthal.

Following its initial contact meetings in the Town of Southbury, Cellco was contacted by Corporal Brian Hughes, Communications Director for the Southbury Police Department. The Town of Southbury is in need of upgrading its emergency service communications systems and after reviewing the proposal, expressed a strong desire to share the proposed tower. The Town of Southbury will be installing a 20-foot whip antenna on the tower if approved. Cellco will also be providing the Southbury Police with a shelter, within which it can store its radio equipment and access to an emergency generator. The Facility, in addition to satisfying Cellco's need for service in the area will resolve a critical coverage problem for local emergency service communications. (Cellco 1, p. 16; Tr. pp. 6-16).

C. Tower Sharing

Consistent with its practice, Cellco regularly explores opportunities to share its facilities with other wireless service providers. Cellco will design the Newtown NE tower so that it could be shared by other carriers, known and unknown at the time of the Council's decision. (Cellco 1, p. 10). Currently, no other wireless carriers expressed any interest in sharing the proposed facility. (Cellco 4, Resp. No. 19).

D. The Newtown NE Proposal

Cellco proposes to construct a tower at a location that would satisfy its RF coverage objectives in the area. (Cellco 1, pp. 1-2). The proposed cell site is on a 32-acre, single-family residential parcel located in the Town's R-20 Residential zone district. The owner's residence is the only occupied structure on the property. (Cellco 1, pp. 1-2, Tab 1; Bulk File 1a.). At the site, Cellco would construct a 100-foot tall telecommunications tower. Cellco would install a total of twelve (12) panel-type antennas, (six PCS antennas and six cellular antennas) with their centerlines at 100 feet AGL. The total height of the tower and appurtenances would be 104 feet, to the top of the tallest Cellco antennas and 120 feet to the top of the proposed Police Department's whip antenna which will be attached to the top of the tower structure. Equipment associated with the antennas would be maintained in a 12' x 30' shelter located near the base of the tower. All site improvements associated with the proposed Facility would be located within a 100' x 100' leased parcel. Access to the site would extend from Upper Fish Rock Road a distance of approximately 1,630 feet to the cell site.¹ Both the tower and leased area have been or will be designed to accommodate additional carriers. (Cellco 1, pp. 1-2, Tab 1; Tr. p. 35).

¹ As originally proposed, the distance from Upper Fish Rock Road to the cell site was to be 1,130 feet. Prior to the hearing, at the request of the property owner, Cellco asked the Council to approve, as a part of this docket, an alternative driveway location that would add approximately 500 linear feet to its length.

III. THE APPLICATION SATISFIES THE CRITERIA OF CONN. GEN. STAT. § 16-50p FOR ISSUANCE OF A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

Section 16-50p of the Public Utility Environmental Standards Act (the "Act"), Conn. Gen. Stat. §16-50g et seq., sets forth the criteria for Council decisions in Certificate proceedings and states, in pertinent part:

In a certification proceeding, the council shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the council may deem appropriate . . . The council shall file, with its order, an opinion stating in full its reasons for the decision. The council shall not grant a certificate, either as proposed or as modified by the council, unless it shall find and determine: (1) A public need for the facility and the basis of the need; (2) the nature of the probable environmental impact, including a specification of every significant adverse effect, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic and recreational values, forests and parks, air and water purity and fish and wildlife; (3) why the adverse effects or conflicts referred to in subdivision (2) of this subsection are not sufficient reason to deny the application. . . .

Conn. Gen. Stat. § 16-50p(a).

Under Section 16-50p, the Applicant must satisfy two key criteria in order for the Application to be granted and for a Certificate to issue. First, the Applicant must demonstrate that there is a "public need for the facility." Conn. Gen. Stat. § 16-50p(a)(1). Second, the Applicant must identify "the nature of the probable environmental impact" of the proposed facility through review of the numerous elements specified in Conn. Gen. Stat. § 16-50p(a)(2), and then demonstrate that these impacts "are not sufficient reason to deny the application." Conn. Gen. Stat. § 16-50p(a)(3). The evidence in the record for this docket establishes that the above criteria have been satisfied and that the Applicant is entitled to a Certificate.

A. A Public Need Exists for the Newtown NE Facility

The first step in the review of the pending Application addresses the public need for the proposed facility. As noted in the Application, the FCC in its Report and Order released on May 4, 1981 (FCC Docket No. 79-318) recognized a public need on a national basis for technical improvement, wide area coverage, high quality and a degree of competition in mobile telephone service. (Cellco 1, pp. 5-6). More recently, the Federal Telecommunications Act of 1996 (the “Telecommunications Act”) emphasized and expanded on these aspects of the FCC’s 1981 decision. (Council – Admin. Notice 7). Among other things, the Telecommunications Act recognized an important nationwide public need for high quality personal wireless telecommunications services of all varieties. Id. The Telecommunications Act also expressly promotes competition and seeks to reduce regulation in all aspects of the telecommunications industry in order to foster lower prices for consumers and to encourage the rapid deployment of new telecommunications technologies. Id. The Council took administrative notice of the Telecommunications Act. (Council Adm. Notice 7).

The record in this docket contains ample, written evidence and testimony that Cellco antennas at the 100-foot level on the proposed tower would allow Cellco to achieve and maintain high quality wireless telecommunications service without interruption from dropped calls and interference. (Cellco 1, p. 7, Tab 7). The record also contains unrefuted evidence that Cellco could not satisfy its coverage objectives in this area if its antennas were mounted 10 feet lower on the proposed tower at 90 feet. (Tr. p. 35; Cellco 4, Resp. No. 21). The record in this docket would support a finding by the Council that Cellco antennas are proposed to be located at the lowest possible height needed to satisfy its coverage objectives and fill the existing coverage gaps along I-

84 between its existing Newtown and Southbury West facilities. (Cellco 4, Resp. No. 21; Tr. pp. 51-52).

B. Nature of Probable Impacts

The second step in the statutory review procedure addresses the probable environmental impacts of the proposed Facility and particularly the following factors:

1. Natural Environment and Ecological Balance

The proposed development of the 111 Upper Fish Rock Road site has eliminated, to the extent possible, impacts on the natural environment. At the proposed cell site, Cellco will construct a new gravel driveway on the property for its access way from Upper Fish Rock Road, to the cell site. Construction of the cell site compound will be limited to the 50' x 60' compound area within the 100' x 100' leased parcel. The access driveway and site compound were located so as to limit the unnecessary removal of substantial trees (greater than 10-inch diameter) from the property. Cellco estimates that a total of 64 trees six inches or greater at breast height would need to be removed to construct the access road and cell site as proposed. (Cellco 4, Resp. No. 14). Approximately 12 additional trees would need to be removed if the amended driveway location, referenced above, is approved. (Cellco 1, Tab 1; Cellco 3, Resp. 16; Tr. pp. 25 and 56).

2. Public Health and Safety

Cellco has considered several factors in determining that the nature and extent of potential public health and safety impacts resulting from installation of the proposed facility would be minimal or nonexistent.

First, the potential for the proposed cell site tower to fall does not pose an unreasonable risk to health and safety. The proposed tower would be designed and built to meet Electronic Industries Association ("EIA") standards. (Cellco 1, Tab 1, p. 6; Cellco 4, Resp. No. 16). The fall radius of

the tower would remain completely within the owner's 32-acre property. Other than the proposed equipment shelter, no other structure is located within 100 feet of the tower. (Cellco 1, Tab 1-Project Plans).

Second, worst-case potential public exposure to radio-frequency ("RF") power density for Cellco operations at the nearest point of uncontrolled access (the base of each tower) would be 29.96% of the FCC standard for the Facility. Power density levels at each site would drop off rapidly as distance from the tower increases. (Cellco 1, p. 14, Tab 1, p. 8).

Lastly, the shared use of the proposed tower for communications purposes by the Town's emergency service entities will greatly enhance public safety in the southwesterly portion of Southbury.

3. Scenic Values

As noted in the Application, the primary impact of any tower facility is visual. (Cellco 1, pp. 12-13). Cellco's site search methodology, described in the Site Search Summary, is designed in large part to minimize the overall visual impact of such facilities. (Cellco 1, Tab 9). As discussed above, wherever feasible, Cellco attempts to avoid the construction of a new tower by first attempting to identify existing towers or other tall non-tower structures in or near its search area. (Cellco 1, Tab 9). Cellco identified four (4) existing tower and/or communications facilities within four miles of the proposed Facility. Cellco already has antennas at the highest available heights on the existing tower at 133 Horse Fence Hill Road in Southbury (Cellco's Southbury West Facility) and on the existing tower at Route 34/I-84 in Newtown (Cellco's Newtown Facility). (Cellco 1, pp. 9-10, Tab 9). There were no existing tall structures in or near the Newtown NE search area properly located or tall enough to satisfy Cellco's objectives. (Cellco 1, pp. 9-10, Tab 9).

If it determines that a new tower must be constructed, Cellco attempts to identify sites where the construction of a tower would not be inconsistent with area land uses and where the visual impact of the Facility would be reduced to the greatest extent possible. Visual impact of a tower can be further reduced through the proper use of alternative tower structures; so-called “stealth installations.” Where appropriate, telecommunications towers camouflaged as, for example, flagpoles, pine trees and church bell towers, can help to reduce visual impacts associated with more traditional telecommunications towers. (Cellco 1, p. 12). During the course of this proceeding, Cellco has expressed a willingness to construct a tree-tower at this site, if the Council deems it appropriate. (Cellco 1, p. 12, Tab 10; Tr. p. 31).

The closest residence to the tower compound is located approximately 590 feet to the northwest. (Cellco 4, Resp. No. 28). The visual impact of the tower from these nearest residences and other surrounding residential areas is significantly reduced or entirely eliminated by (1) changes in the topography of the area; (2) screening provided by surrounding trees; and (3) by the design of the tree tower. (Cellco 1, p. 12, Tab 10; Tr. pp. 20-21).

As the record indicates, the location of the proposed tower has allowed Cellco to propose structures at the minimum height required to satisfy its capacity needs in the area while eliminating, to the extent possible, visual impact on the surrounding landscape. (Cellco 1, Tabs 1 and 10).

4. Historical Values

As it does with all of its tower applications, prior to filing the Application with the Council, Cellco requested that the State Historic Preservation Office (“SHPO”) of the Connecticut Historical Commission (the “Commission”) review the proposal. (Cellco 1, Tab 11). Based on its review of the information submitted by Cellco, the State Historic Preservation Office determined that the development of a telecommunications tower at the site proposed would have “no effect” on

Connecticut's cultural heritage. (Cellco 1, p. 18, Tab 11; Cellco 4, Resp. No. 26). Cellco has no reason to believe that there are any other impacts on historical values not addressed by the Commission's review that are sufficient to warrant a denial of this Application.

5. Recreational Values

There are no recreational activities or facilities at the Facility that would be adversely impacted by the proposed tower development. (Cellco 1, Tab 10).

6. Forests and Parks

There are no State Forest or State Park facilities located at or near the Facility. (Cellco 1, Tab 10). Kettletown State Park is located approximately $\frac{3}{4}$ miles to the southeast of the Facility. The evidence in the record would support a finding that the Facility will not be visible and, therefore, would have no impact on Kettletown State Park. (Cellco 4, Resp. No. 25).

7. Air and Water Quality

a. Air Quality. The equipment associated with the proposed Facility would generate no air emissions under normal operating conditions. (Cellco 1, Tab 1, p. 7). During power outage events and periodically for maintenance purposes, Cellco would utilize an on-site emergency backup generator to provide emergency power to the facility. The use of the generator during these limited periods would result in minor levels of emissions. Pursuant to R.C.S.A. § 22a-174-3, Cellco will obtain an appropriate permit from the Connecticut Department of Environmental Protection ("DEP") Bureau of Air Management prior to installation of the proposed generator. (Cellco 1, Tab 1, p. 7).

b. Water Quality. The proposed Facility would not utilize water, nor would it discharge substances into any surface water, groundwater, or public or private sewage systems. There are no lakes, ponds, rivers, streams, wetlands or other regulated water bodies

located at or adjacent to the Facility. The closest water body or wetland to the cell site is located approximately 450 feet to the west of the Facility. Thus, the proposed Facility would not impact local water quality. (Cellco 1, Tab 1, p. 7, Tab 11 – VHB Wetlands Report).

Cellco proposes to install a diesel-fueled back-up generator within its equipment building for use during power outages. The generator's fuel is stored in a double-wall "belly" tank which is a part of the generator unit. The tank is equipped with a leak detection system which is monitored remotely. In addition, the floor of the generator room itself can, if necessary, contain the entire capacity of all of the generator's fluids (fuel, oil, etc.). Cellco does not expect the proposed facility to impact water quality in the area. (Cellco 1, Tab 8; Tr. pp. 33-34).

8. Fish and Wildlife

As a part of its National Environmental Policy Act ("NEPA") Checklist, Cellco received comments on the proposed facility from the U.S. Department of Interior, Fish and Wildlife Service ("USFWS") and the Environmental and Geographic Information Center of the DEP. The USFWS has confirmed that no federally-listed or proposed threatened or endangered species or critical habitat under USFWS jurisdiction occur in the project area. (Cellco 1, p. 13, Tab 11; Cellco 5).

The Connecticut DEP indicated that the bald eagle, a State endangered species "are within the area of this project". (Cellco 5, November 27, 2006 letter from Julie Victoria). The Wildlife Division of DEP recommends that Cellco avoid effecting the eagles by not constructing the Facility between February 1 and August 1. (Id.) Cellco does not object to this recommendation. (Tr. p. 37).

C. The Application Should Be Approved Because The Benefits Of The Proposed Facility Outweigh Any Potential Impacts

Following a determination of the probable environmental impacts of the proposed facility, Connecticut General Statutes § 16-50p requires that the Applicant demonstrate why these impacts

“are not sufficient reason to deny the Application.” Conn. Gen. Stat. § 16-50p(a)(3). The record establishes that the impacts associated with the proposal would be limited and outweighed by the benefits to the public from the proposed facility and, therefore, requires that the Council approve the Application.

As discussed above, the only potential adverse impact from the proposed flagpole tower involves “scenic values.” As the record overwhelmingly demonstrates, both of the proposed towers would have minimal impacts on scenic values in the area. (Cellco 1, p. 12, Tab 10). These limited aesthetic impacts may be, and in this case are, outweighed by the public benefit derived from the establishment of this facility. Unlike many other types of development, telecommunications facilities do not cause indirect environmental impacts, such as increased traffic and related pollution.


The limited aesthetic and environmental impacts of the proposed facility can be further mitigated by the sharing of the facility. The proposed facility would be capable of supporting additional carriers. (Cellco 1, pp. 9-10).

In sum, the potential environmental impacts from the proposed facility would be minimal when considered against the benefits to the public. These impacts are insufficient to deny the Application. The site, therefore, satisfies the criteria for a Certificate pursuant to Connecticut General Statutes § 16-50p, and the Applicant’s request for a Certificate should be granted.

IV. CONCLUSION

Based on the evidence contained in the record and the arguments presented above, Cellco has satisfied the criteria in Connecticut General Statutes Section 16-50p. Accordingly, the issuance of a Certificate to the Applicant is appropriate and fully consistent with the Act.

Respectfully submitted,
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WIRELESS

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